IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.92 OF 2005

Kishore Odhavjibhai Agheda .. Applicant

vs

Bhadresh Odhavjibhai Agheda .. Respondents

Mr.Nitin Trivedi for Applicant

..

CORAM : B.H.MARLAPALLE, J

DATE: 26th September, 2005

P.C.

1. Heard learned counsel for the applicant who is the defendant in Suit No.2696 of 2002. By an earlier order dated 6th December, 2003 the trial Court while deciding the application under section 9A of the Code of Civil Procedure held that the suit was required to be valued at Rs.3,47,000/- and the plaintiff was called upon to pay the difference of court fees within a period of six weeks. On

account of failure in this regard on the part of the plaintiff, Notice of Motion No.153 of 2005 was taken out by the defendants praying for return of the plaint for non compliance of the earlier order dated 6th December 2003 passed under Order 7 Rule 11 of the Code of Civil Procedure. By the impugned order dated 3rd March 2005 the learned Judge of the trial Court has observed that valuation of the suit is a mixed question of law and fact which requires evidence to be adduced by the plaintiff and therefore the plaintiff would be put to consequences if the suit was not valued properly. Dismissal of the suit before the parties adducing evidence would not be justified and therefore the Notice of Motion came to be dismissed.

2. The view taken by the trial court cannot be held to be illegal or perverse. The exact valuation of the suit can be more appropriately done by adducing the evidence by the plaintiff and in any case the court is seized of the issue of payment of proper fees. The plaintiff can be called upon to pay the deficit court fees as ordered by the trial Court after the evidence is adduced. No interference is therefore called for

in the impugned order. Hence, this appeal must fail at the threshold.

3. Application is dismissed in limine.

(B.H.Marlapalle, J)